

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY PECK JACKSON,

Petitioner,

v.

ROBERT NEUSCHMID, *et al.*,

Respondents.

Case No. 1:20-cv-00198-JDP

FINDINGS AND RECOMMENDATIONS TO
DISMISS PETITION AS UNTIMELY AND
FOR FAILURE TO STATE A COGNIZABLE
CLAIM

RESPONSE DUE IN FOURTEEN DAYS

ECF No. 1

ORDER DIRECTING CLERK OF COURT TO
ASSIGN CASE TO DISTRICT JUDGE

Petitioner Gregory Peck Jackson, a state prisoner without counsel, petitioned for a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. Petitioner claims that California's procedure for initiating a criminal case by felony complaint is improper. *Id.* at 15. On April 2, 2020, we ordered petitioner to show cause within thirty days of the date of service of our order why the petition should not be dismissed as untimely and for failure to state a claim. ECF No. 10. More than thirty days have passed, and petitioner has failed to respond to our order. For the following reasons, we recommend the petition be dismissed.

Discussion

Under the Antiterrorism and Effective Death Penalty Act (“AEDPA”), petitioners seeking habeas relief under § 2254 must comply with a one-year statute of limitations. For most habeas petitioners, the one-year clock starts to run on “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” 42 U.S.C. § 2244(d)(1)(A). Here, petitioner was convicted of assault with a firearm on February 11, 2014; he did not seek direct review of his conviction. ECF No. 1 at 1, 7. Absent any statutory or equitable tolling, the one-year statute of limitations expired on April 14, 2015 under § 2244(d)(1)(A).¹ Nearly five years later, on January 23, 2020, petitioner sought federal habeas relief through the instant petition. Petitioner does not argue that he is entitled to any tolling.² Therefore, we find that petitioner has failed to meet his burden to show that the petition is timely. *See Smith v. Duncan*, 297 F.3d 809, 815 (9th Cir. 2002), abrogated on other grounds by *Pace v. DiGuglielmo*, 544 U.S. 408 (2005).

Moreover, petitioner failed to allege a violation of “clearly established federal law”—meaning a violation of a U.S. Supreme Court holding. *See White v. Woodall*, 572 U.S. 415, 419 (2014). Federal habeas relief is not available for alleged violations of state law. *See Estelle v. McGuire*, 502 U.S. 62, 67 (1991); *Pulley v. Harris*, 465 U.S. 37, 41 (1984) (“A federal court may not issue a writ [of habeas corpus] on the basis of a perceived error of state law.”). Here, petitioner claims that California’s procedure for initiating a criminal case by felony complaint is improper.³ ECF No. 1 at 15. Petitioner argues that the complaint did not confer jurisdiction on the state trial court, did not give petitioner proper notice of the charges brought against him, and

¹ We arrive at April 14, 2015 by adding 60 days to the date of petitioner’s conviction, which is the time for seeking direct review of a criminal conviction in California. *See Cal. R. of Ct. 8.308(a)* (West 2010).

² Although petitioner sought habeas relief in the California Supreme Court on September 19, 2019, that petition did not affect the timeliness of the instant petition. *See Nino v. Galaza*, 183 F.3d 1003, 1006 (9th Cir. 1999) (“AEDPA’s statute of limitations is not tolled from the time a final decision is issued on direct state appeal and the time the first state collateral challenge is filed because there is no case ‘pending’ during that interval.”).

³ The petition appears, in large part, to be a photocopy of a boilerplate habeas petition challenging California’s criminal complaint procedure as unconstitutional and is devoid of any references to the facts or circumstances of petitioner’s case.

1 that the filing itself was a public offense that nullified petitioner's conviction. *See id.* at 15-28.
2 We have found no "clearly established federal law" holding California's criminal complaint
3 procedure unconstitutional.

4 Therefore, we find that it plainly appears that petitioner is not entitled to relief. We
5 recommend that the petition be dismissed as untimely and for failure to state a cognizable claim.

6 **Certificate of Appealability**

7 A petitioner seeking a writ of habeas corpus has no absolute right to appeal a district
8 court's dismissal of a petition; he may appeal only in limited circumstances. *See* 28 U.S.C.
9 § 2253; *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). Rule 11 Governing Section 2254
10 Cases requires a district court to issue or deny a certificate of appealability when entering a final
11 order adverse to a petitioner. *See also* Ninth Circuit Rule 22-1(a); *United States v. Asrar*, 116
12 F.3d 1268, 1270 (9th Cir. 1997). A certificate of appealability will not issue unless a petitioner
13 makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).
14 This standard requires the petitioner to show that "jurists of reason could disagree with the district
15 court's resolution of his constitutional claims or that jurists could conclude the issues presented
16 are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327; *accord*
17 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Here, petitioner has not made a substantial
18 showing of the denial of a constitutional right. Thus, we recommend that the court decline to
19 issue a certificate of appealability.

20 **Findings and Recommendations**

21 For the foregoing reasons, we recommend that the court grant dismiss the petition as
22 untimely and for failure to state a claim and decline to issue a certificate of appealability. These
23 findings and recommendations are submitted to the U.S. district judge presiding over the case
24 under 28 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within fourteen days of the service of the
25 findings and recommendations, the parties may file written objections to the findings and
26 recommendations with the court and serve a copy on all parties. That document must be
27 captioned "Objections to Magistrate Judge's Findings and Recommendations." The presiding
28 district judge will then review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C).

Order

The clerk of court is directed to assign this case to a district judge for the purposes of reviewing these findings and recommendations.

IT IS SO ORDERED.

Dated: May 22, 2020


UNITED STATES MAGISTRATE JUDGE

No. 206.